Bank of America in Violation of Securities Exchange Act of 1934?

Representative Dennis Kucinich (D-OH), Chairman of the Domestic Policy Subcommittee, today sent a letter to Mary Schapiro, Chairman of the Securities and Exchange Commission, asking the SEC to make a determination as to whether Bank of America was in violation of the Securities Exchange Act of 1934 by withholding information from shareholders about Merrill Lynch's plans to pay billions of dollars in bonuses to top Merrill Lynch employees.

With the knowledge of Bank of America, Merrill Lynch Board Members authorized the payment of $3.62 billion in performance bonuses to executives who made at least $300,000 per annum and had achieved the title of Vice-President or greater, shortly before Merrill's acquisition by Bank of America. The bonuses paid to Merrill Lynch employees are 22 times the size of bonuses paid at AIG and constitute more than a third (36.2%) of TARP funds allocated to Merrill. Also unusual, the bonuses were allocated before Merrill tallied fourth quarter results, a quarter in which Merrill lost over $15 billion.

Bank of America executives did not provide shareholders with details of the Merrill bonus plan it possessed when asking those shareholders to approve the merger. The SEC is tasked with enforcing the federal securities laws, which prohibit fraudulent statements and omissions in communications to shareholders. Those rules prohibit the omission of material facts. The Supreme Court has ruled that in circumstances such as these: "An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote."

In the letter, Congressman Kucinich asks, does the SEC believe that Bank of America's omission of information about the bonuses constitutes material omission? And if so, what steps will the SEC consider to address the omission?

The full text of the letter is below:

Documents and Links

- Kucinich letter to SEC 04.06.09